SUPREME COURT, U. S.
No. 119

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In the Supreme Court of the United States

OCTOBER TERM, 1961

LOCAL 19, INTERNATIONAL BROTHERHOOD OF LONGSHOREMEN, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington 25, D. C.

STUART ROTHMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

LEE M. MODJESKA,
Attorney,
National Labor Relations Board,
Washington 25, D. C.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 47-54) is reported at 286 F. 2d 661. The decision and order of the National Labor Relations Board (Pet. App. 28-46) are reported at 125 NLRB 61.

JURISDICTION

The decision of the court of appeals was issued on January 10, 1961, and a decree was entered on

February 28, 1961 (Pet. App. 47, 55). Petitioner's request for rehearing was denied on February 28, 1961 (Pet. App. 60). The petition for certiorari was filed on May 27, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, on the facts of this case, the Labor Board was warranted in not making certain explicit findings before concluding that the Union had refused to bargain in violation of Section 8(b)(3) of the National Labor Relations Act.

STATUTES INVOLVED

The relevant statutory provisions are set forth at pp. 13-16 of the petition.

STATEMENT

A. The Board's Findings of Fact

During the past 20 to 25 years, about 11 Chicago companies which use longshoremen labor have bargained on a group basis with Local 19, International Brotherhood of Longshoremen, AFL-CIO (B.A. 14; 33-34, 92, 93).[1] The group has formed an informal association, which operates as follows: Prior to meeting with the Union, employer representatives meet together to draft a joint proposal. As negotiations progress, they hold further meetings to discuss Union demands and to formulate counter-proposals (B.A.

[1] "B.A." refers to the appendix to the Board's brief in the court below.

14-15; 35-36, 46, 90, 94). Disagreements among the companies are resolved by majority vote (B.A. 15; 37, 46-47), and a single counter-proposal is presented to the Union on behalf of the entire Association (B.A. 15; 35, 90-93). The job of negotiating with the Union falls mainly on a chief spokesman, who is retained separately by some of the companies, but who represents all of them during contract talks (B.A. 15; 34-35, 57-58). Once there is agreement on contract terms, a memorandum of agreement is signed by the Union and the Association (B.A. 58, 61). Its terms are then incorporated into identical individual contracts executed between the Union and each of the employers represented in the negotiations (B.A. 37-38, 43-44, 58, 61). No member company has ever broken away from the negotiations to bargain independently, or refused to execute its own individual contract with the Union after the memorandum of agreement was signed (B.A. 108).

Since 1951, Wacker Warehouse Company has operated a storage warehouse in Chicago (B.A. 18; 45), where it stores merchandise which arrives by boat or barge and other goods. A dispute arose between Wacker and Local 19 over who would perform the work of moving marine freight out of storage. Local 19 had a contract with Wacker for unloading such freight, but the removal from storage work was assigned to Wacker's "inside" employees who were represented by another union, Warehousemen's Local 781 (B.A. 18; 45, 112-114). Matters "rocked along" until May 1955, when Wacker abandoned the business of receiving waterborne freight for storage (B.A. 19, 21-22; 47, 64-65, 117-118).

In March 1957, Wacker joined other Association employers in negotiating a new contract with the Union. When Wacker realized that the Union intended to insist on a provision giving it the right to move marine goods from storage[2] and to enforce the provision if Wacker resumed the storaging of marine freight, Wacker dropped its stevedoring operation entirely (B.A. 19; 48).

Subsequently, the Chicago Stevedoring Company was independently organized to take over the work which Wacker was abandoning, and Chicago entered into a contract with Wacker (B.A. 13, 19; 53, 75). At the same time Chicago obtained the Union's consent to join the other Association members in the current contract talks (B.A. 17; 75. 154, 155), and on May 13, 1957, it began to attend the meetings of the employer group and to participate in the collective bargaining sessions (B.A. 17; 60).[3]

On May 16, with final agreement on contract changes in sight, Union representatives approached Frederick Turner, chief spokesman and representative of the Association, and Henry Marsh, president of Chicago Stevedoring, to question them about the

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[2] The provision in question, Article 1(b), provided that the Union should have jurisdiction of (B.A. 166): "All work from the hold of vessel, through house to car, truck or upper floors, in warehouse, to its final resting place in said warehouse, or *in removing cargo from the warehouse, up to, on and into the hold of the vessel, truck or car, or vice versa.*" (Emphasis added.)

[3] Wacker thereupon ceased to have anything further to do with the negotiations (B.A. 40).

relation between Chicago and Wacker, and also about the work to be given Union longshoremen. Turner and Marsh assured the Union that Chicago was entirely separate and independent from Wacker, that their sole relation was contractual, and that Union longshoremen would get all the work which Chicago had to give (B.A. 70, 76-77). The Union remained dissatisfied.

In order to prevent this issue, involving Chicago alone, from holding up an agreement which was otherwise complete, the following paragraph was added to the memorandum of agreement between the Association and the Union (B.A. 17; 71-72, 77, 78, 138):

> 15. Agreement with respect to Chicago Stevedoring Company only is subject to mutual agreement concerning the jurisdiction of work formerly at Wacker Warehouse, now at Chicago Stevedoring Company, handled by Local 19 under agreement expiring May 15, 1957.

On May 17, this memorandum was signed by attorneys Friedman for the Union and Turner for the Association (B.A. 17; 60-61, 72). Promptly thereafter the Union tendered contracts to all the Association employers except Chicago Stevedoring (B.A. 17; 61).

On May 27, Turner met with Union representatives to settle the issue of work jurisdiction and to obtain a written contract for Chicago Stevedoring. He pointed out to the Union that once Chicago's longshoremen delivered waterborne freight to Wacker for storage these goods passed from that company's control and became Wacker's responsibility. Subsequent

handling of such goods was Wacker's work, he said, subject to its contract with Warehousemen's Local 781. Accordingly, Turner offered to execute the Association contract, under which Chicago obligated itself to give *all of its work* to Local 19 (B.A. 61-66). The Union refused this offer and a similar offer of August 22, 1957 (B.A. 156).

On October 5, 1957, Friedman offered to compose a letter of understanding among Chicago, Wacker and the Union which would deal with the problem of work jurisdiction in a way agreeable to all parties, and promised to execute a contract if Chicago and Wacker agreed to its terms (B.A. 82-83). Neither company signed the proposed letter, for it stated that Local 19 longshoremen were currently moving marine freight out of storage at Wacker and provided that the longshoremen would "continue" to have exclusive jurisdiction of this work (B.A. 19; 84, 163-164). Turner then offered, on November 6 and again on November 20, to execute the Association contract for Chicago, which offer the Union again rejected (B.A. 157-158, 159).

B. The Board's Conclusions and Order

On the foregoing facts, the Board found that all of the stevedoring companies had associated themselves for purposes of collective bargaining into a single multi-employer unit; that Local 19 was the statutory representative of the longshoremen employees in that unit; that Chicago Stevedoring Company had joined the multi-employer unit and participated in the 1957 contract negotiations; and that

Chicago Stevedoring was completely independent from Wacker Warehouse Company and was doing business with Wacker as an independent contractor (B.A. 14-17).

The Board further found that, as of May 17, the parties had reached agreement on contract terms for all of the companies, including Chicago Stevedoring, except that the issue of work jurisdiction, insofar as Chi- resolution (B.A. 17- was deferred for subsequent paragraph 15 of the M. The Board thus viewed ment (*supra*, p. 5) dy 15 memorandum of agree- aminer, who had inte ferently from the Trial Ex- bargain at a later da reted it as an agreement to cago Stevedoring fron which entirely removed Chi- Association and the the negotiations between the

Finally, the Board ion (B.A. 8-11). entered into contracts and that, although the Union unit, it refused to do ith the other members of the condition that work be with Chicago, except on the Since the latter work ging to Wacker be included. the Board held that, outside the bargaining unit. violated its bargaining insisting on it, the Union (3) of the Act. (B.A ligation under Section 8(b) 21-23.)

The Board's order d cted the Union to cease and desist from conditioni the execution of a contract with Chicago Stevedo g upon a guaranty from Wacker Warehouse th Union longshoremen, rather than members of Wa ousemen's Local 781 in the employ of Wacker, wo be assigned to move freight out of storage. Affirm ively, the Board ordered the Union to execute with icago Stevedoring a contract

comparable to those executed with the other members of the unit, to bargain collectively with the Association in the future, and to post appropriate notices (B.A. 24-25).

C. The Decision of the Court of Appeals

The court of appeals entered a decree enforcing the Board's order (Pet. App. 46-54). The court held that under these circumstances the Board could properly conclude that, by conditioning execution of the standard contract upon a guaranty on which the Union had no right to insist, the Union had refused to bargain with the Association, in violation of Section 8(b)(3) of the Act. In so doing, the court found without merit the Union's contention that the Board had failed to make a specific finding that the Union had been requested to bargain with the Association rather than Chicago Stevedoring (Pet. App. 52-53).

ARGUMENT

Petitioner does not contend that there was no substantial evidence upon the whole record to warrant the Board's finding that Wacker and Chicago Stevedoring were two separate and independent entities. Compare *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474. Nor does petitioner directly attack the Board's conclusion that its insistence that Chicago Stevedoring guarantee it work outside of the bargaining unit, which was being performed by another employer, Wacker, was a violation of Section 8(b)(3) of the Act. Rather petitioner seeks review only upon the narrow ground (Pet. 5-

11) that the Board's ultimate determination that the union had committed an unfair labor practice is defective because the Board failed to make an explicit finding that the Association had requested the Union, on and after May 17, 1957, to bargain with it concerning a contract for Chicago Stevedoring.

1. A new request by the Association would have been material only on the Trial Examiner's theory of the case, which the Board rejected. The Trial Examiner had viewed paragraph 15 of the May 17 memorandum of agreement (see the Statement, *supra*, p. 5) as "an agreement to bargain at a later date," which had the effect of severing Chicago Stevedoring from the Association's bargaining negotiations on behalf of the other members (Pet. App. 25). On this assumption, if the Association, on behalf of Chicago Stevedoring, were again to resume bargaining with the union, it would perhaps have to address a new specific request to the union to bargain. The Board, however, regarded paragraph 15, not as removing Chicago Stevedoring from the negotiations, but as merely reserving the issue of work jurisdiction for further negotiation. Under this view, Chicago, through the Association, and the Union in effect agreed to be bound by the contract negotiated by the Association, subject only to additional discussion of the work jurisdiction question (Pet. App. 35).[4] It was thus immaterial whether Turner explicitly iden-

[4] Reference to the Board's decision (Pet. App. 35) shows that, contrary to petitioner's contention (Pet. 10), the Board stated its reasons for disagreeing with the Trial Examiner, and thereby adequately set forth the basis for its holding.

tified himself as representing the Association when he later requested the Union to negotiate the work jurisdiction question. Since Chicago had remained in the Association throughout, the Union's original obligation to bargain with the Association, which unquestionably existed up to May 17, 1957, continued until the issue reserved by the Association with respect to Chicago Stevedoring was resolved.

2. In any event, even if it be assumed that it was necessary to establish that a new request to bargain was made by the Association after May 17, the court below correctly held that such a request was "implicit" in the subsequent negotiations and in the Board's findings thereon. As shown in the Statement, *supra*, pp. 5-6, on May 27 and several times thereafter Turner met with, or wrote to, representatives of the Union, discussed the work jurisdiction problem with them, and asked them to enter into the Association contract with Chicago. Since the requests were made for the purpose of having the Union discharge whatever remained of its obligation to the Association under paragraph 15 of the memorandum of agreement, and were advanced by counsel who had represented the Association in the bargaining negotiations, they could properly be regarded as having been made only on behalf of that entity, rather than on behalf of Chicago individually. To have required Turner to go further and preface his attempts to negotiate on the work jurisdiction issue with the express announcement that he came as

a representative of the Association, would be to exalt form over substance.*

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

STUART ROTHMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

LEE M. MODJESKA,
Attorney,
National Labor Relations Board.

June, 1961.

Although a party seeking to bargain must make that wish plain to the other side (*National Labor Relations Board* v. *Columbian Enameling Co.*, 306 U.S. 292, 297-298; *National Labor Relations Board* v. *Valley Broadcasting Co.*, 189 F. 2d 582, 586 (C.A. 6)), the statute does not require that the "request to bargain be in *haec verba*, so long as there was one by clear implication" (*Jay Silk Mills, Inc.* v. *National Labor Relations Board*, 185 F. 2d 732, 741 (C.A. D.C.); see *National Labor Relations Board* v. *Southeastern Rubber Mfg. Co., Inc.*, 213 F. 2d 11, 14-15 (C.A. 5)).

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